

REMARKS

It is requested that the time for responding to the Office Action be extended one month, up to July 23, 2005. The Commissioner is authorized to charge the \$60 fee for a response within the first month and any other fees necessitated by this response and to credit any overpayment to deposit account No. 22-0261.

Claims 3 and 4 have been amended to better clarify the applicant's invention.

The applicant is submitting herewith a further terminal disclaimer which references U.S. Patent No. 6,651,379 from which the applicant has claimed priority. It is submitted that in view of the disclaimer the Examiner's double patenting rejections are traversed. Please charge the \$65 fee for the terminal disclaimer to deposit account No. 22-0261.

I. The Rejections Pursuant to 35 U.S.C. §102

Claims 1, 4, 9, 11, 12 and 18 stand rejected under Section 102 in view of Hughes. Reconsideration of the rejection is respectfully requested. In this regard, Claim 1 is identical to claim 1 of U.S. Patent No. 6,651,379 patent with the exception of the limitation that requires two side of the device being devoid of adhesive. It is submitted that this limitation was not the reason that established patentability of the claims already allowed in the parent case. In fact, the Hughes reference itself suggested providing regions around an insect trap to allow a user to manually manipulate the device, after a pest was caught without coming into contact with the adhesive. Reconsideration of the rejection is requested.

Claim 4 has been amended to make it clear that the cardboard support is separate and distinct from the compressible substrate material and each sheet has such a support integrated thereon. Hughes does not disclose the invention recited in claims 1 nor does it disclose providing the claimed support. In fact, Hughes teaches away from providing a rigid support behind a compressible materials because such a structure would interfere with tearing the sheet away and wrapping up and disposing the pest as taught by Hughes.

In connection with the rejection claims 9, 11, 12 and 18, the applicant does not rely upon the paper material recited in these claims to establish patentability but relies upon the limitation set forth in claim 1 in combination with the additional limitation. In connection with claim 18, the applicant disagrees that Hughes discloses the claimed extension means feature but recognizes that the Schuster patent suggests providing a device on the end of an extension means or pole.

The Examiner rejected claims 1-3, and 12 in view of the commercially available "*Post It*" brand notes. Even if one were assume that *Post-It* notes are compressible and pliable, the applicant disagrees that this materials is compressible and pliable allowing it to depress and conform to the body of the pest or insect as each claim requires. In addition, the Examiner has not cited the teaching or existence of this structure and therefore the rejection is traversed. Further, as discussed above, claim 1 herein is similar to claim 1 of the with the exception of the limitation that required that two sides of the substrate be devoid of adhesive materials to facilitate manual manipulation of the device. This same *Post It* art was cited against claim 1 of the U.S. Patent No. 6,651,379 and the rejection was previously traversed, because *inter alia*, it did not

teach or disclose providing a substrate that would conform to the shape of the insect. The applicant disagrees that wrapping up an insect in piece of paper such as a *Post-It* note will cause the insect to embed within the paper. Rather, the substrate will substantially maintain its planer surface and --rather than causing the material to be displaced in a direction transverse to the plane formed by the substrate -- the substrate is merely curved or folded around the pest.

In connection with the rejection of claims 1-3 and 12 in view of *Post-It* notes (1) as discussed above, it is submitted that *Post It* notes do not teach providing a substrate that will deform to the body of an insect. It is further observed that this same argument was been considered on the previous appeal. In connection with claims 2, 3 and 12, the applicant does not rely upon these claims to patentably distinguish the invention from *Post-It* brand notes.

II. The Rejections under 35 U.S.C. § 103.

Claims 2-3, 5-6 7-8 10 and 17 have been rejected in view of the Patent to Hughes.

In connection with the Section 103 rejection, the Examiner suggests that the applicant did not set forth a problem that was solved by his invention and therefore it would have been obvious to substitute the adhesive used in the Hughes device to that similar to conventional transparent adhesive tape as recited in claims 2 and 3. The Applicant respectfully disagrees with the Examiner in this regard. The Applicant explained that his invention was directed to a device that could be used for swatting and capturing insects that had alighted on surfaces without leaving a residue of the insect on the surface and, the use of the adhesive recited in claims 2 and 3 permits or is related to this function. The adhesive used by Hughes are not releasable and, if one used the

device as taught, the adhesive would likely adhere to the surface on which the target pest was found. It would also be difficult to remove the trap from the surface if the adhesive works as disclosed wherein the adhesive can retain a live rodent that has traveled upon the adhesive surface. Furthermore, because Hughes it is a passive trap, there is no suggestion or motivation to substitute the adhesive that is disclosed with the claimed releasable adhesive because the device would be less effective in achieving its objective.

In connection with claim 17, The Applicant also disagrees with the Examiner's contention that it would be obvious to make the substrate hydrophilic. It is only with the hindsight of the applicant's invention that the advantageous of using a hydrophilic material would seem "obvious." Moreover, the Hughes disclosure does not disclose crushing the pest in such a manner that it would release fluids where having a hydrophilic material would be advantageous. Hughes discloses the use of an adhesive trap to catch a small mammal. It does not discuss or disclose smashing the animal so that fluids are released. . In any event, it is submitted that there is no suggestion of teaching in the prior art to provide a hydrophilic material and therefore the rejection should be withdrawn.

The Examiner's response to the Applicant's previous argument is likewise not understood. Is it the Examiner's position that a roll of paper towels is a reference? If so, the applicant should be afforded the opportunity to explain why the invention distinguishes from the reference and why the combination now apparently indirectly advanced by the Examiner is not obvious in the context of a 103 rejection. It is submitted that if one combined Hughes with a

paper towel, the resultant structure would not result in the claimed invention. Providing the adhesive of Hughes on a paper towel does not result in the claimed invention. Further, without the discontinuous regions, the combination simply does not make any sense.

The basis of rejection of claims 5-6, 7-8 and 10 under section 103 is not set forth in the Office Action. To the extent that the examiner relies upon the rationale set forth in the previous rejection, the basis was not set forth in the earlier action. In view of the absence of any basis or argument that would render these claims obvious, the rejections should be withdrawn. It is further submitted that the Applicant should be afforded the opportunity to fairly address the Examiner's argument with respect to these rejections.

Claims 13, 14, 15 and 16 have been rejected under Section 103 in view of Hughes and Sherman.

Claims 13, 14, 15 and 16 are directed to the feature of the invention wherein (1) the adhesive is discontinuously applied over the surface, (2) the leading edge of the device is not covered by the adhesive but rather, the adhesive is located in wells (3) and directed to arrangements of the adhesive on the surface.

As understood, Sherman discloses providing wells and/or ridges to control a viscous insecticide from flowing over the surface. In the absence of these structures, the insecticide material would apparently flow off the device. It is submitted that there would be no reason or motivation to alter the Hughes to provide wells and the resulting device would not be the same as that claimed. Hughes does not use a poison; rather its intent is to trap an insect using adhesive.

The reasons that Sherman's insecticide is distributed in discontinuous manner are largely unrelated to the reason which the applicant's adhesive is discontinuous in the applicant's device. The wells or walls of the bosses are provided "in order to provide for containment of the viscous insecticide substance and to provide a barrier to one running a hand"... over the surface, so the hand does not contact the poison. See Column 5, lines 31-34. It is important to recognize that Sherman does not disclose providing an adhesive in the wells for trapping insects. The only "adhesive" disclosed by Sherman is used to apply the device to a surface. Like Hughes, Sherman discloses a passive device that works by attracting insects and then poisoning them. While in general, the existence of the offset wells may serve one similar function in that the user does not come into contact with the adhesive, it is submitted that there is no such motivation to alter the Hughes device in this fashion. To the extent that Hughes even may appreciate the human contact problems, Hughes solves the problem by providing a circumference that is devoid of adhesive. Finally, the problem of human contact with a poison is different than a contact with adhesive.

In connection with the Examiner's remarks with respect to Sherman, the Applicant disagrees that viscous poison can be used as an insect trap. There is simply nothing in the record to support the Examiner's contention and the Applicant should be afforded an opportunity to traverse such information. In connection with the Examiner's suggestion that Hughes and Sherman could be combined to reach the invention, the resulting structure would be region of adhesive with wells of viscous insecticide materials spread throughout the region, not the claimed structure of the invention.

In any event, it is submitted that there would be no motivation to combine these references as the Examiner suggests and, to the extent that the references were combined, one would have to pick and choose certain elements to make it operable. One reference works by poison and the other works by passively trapping the pest. Hughes device is not intended to trap flying insects and its surface, like the applicant's invention is not intended to come into contact with a surface on which the insect has landed. Rather, Hughes is a passive device intended to be placed in a horizontal position so that small rodents can be trapped. There is no teaching, suggestion or motivation to place Hughes on vertical surface such as window or wall and, because in the absence of a motivation to place the trap in a vertical orientation, there is no reason to put wells or bosses on the surface to contain the adhesive. Further, placing the adhesive on wells may interfere with the capturing process.

In connection with the Examiner's position that even molded plastics can be compressed and deformed, the applicant has already limited the claimed structure to further require it to conform to the body of an insect of pest and partially embed the insect into the substrate. See claim 1. Whether or not plastic can be compressed or deformed is not relevant to the claims at issue. If the Examiner can cite art showing such plastic being deformed to conform to the body of an insect, the Applicant will address such prior art.

Claims 19-20 are rejected under Section 103 over Hughes, in view of Sherman and further in view of Shuster

Applicant David W. Nelson
Appl. No. 10/719,063

Claims 19 and 20 are directed to the method wherein the claimed structure is used and the insect. It is submitted that the prior art simply does not teach such a method of insect capture. While the Schuster provides a compressible material, the material is not the substrate that engages the insect but rather a sponge-like material that is located behind the substrate. Once again, the Schuster reference was previously considered in connection with the prosecution of the parent case and did not render obvious claims that are closely analogous to the claims now presented.

Wherefore, it is submitted that each of the Examiner's rejections has been traversed and, as the case is otherwise in condition for allowance, a notice to that effect is solicited.

Respectfully submitted,

Date: July 25, 2005



Andrew C. Aitken
Registration No. 36,729
VENABLE LLP
P.O. Box 34385
Washington, D.C. 20043-9998
Telephone: (202) 344-4000
Telefax: (202) 344-8300

::ODMA\PCDOCS\DC2DOCS\1667316\1